

In the Drawings:

Please replace drawing sheet showing FIG. 2 with the newly-submitted figure attached herewith on a separate sheet. The reference numeral for the hose (previously reference number 50) has been changed to 57 to comply with the corresponding change to the specification.

REMARKS

This is a full and timely response to the outstanding final Office Action mailed April 13, 2004. Upon entry of the amendments in this response, claims 29-32 are pending. In particular, Applicants have added claims 29-32 and have canceled claims 26-28 without prejudice, waiver, or disclaimer. Reconsideration and allowance of the application and presently pending claims are respectfully requested.

I. Examiner Interview

Applicants wish to express their appreciation for the time the Examiner spent with Applicants' attorney during a telephone discussion on May 6, 2004, regarding the outstanding Office Action. Although agreement was not reached, the Applicants appreciate the cooperation exhibited by the Examiner to further explain the Office Action in order to advance the prosecution of this application.

II. Premature Issuance of Final Office Action

Applicants respectfully request that the status of FINAL be withdrawn, as it was issued prematurely. In this regard, the presently-outstanding Office Action has changed its basis for rejection for the subject matter of claims 26-28, which was not necessitated by any amendments made to the claims.

In this respect, the Office Action mailed October 15, 2003 indicated claim 15 as being allowable if rewritten to include the limitations of its base claim and any intervening claims. Applicants' attorney prepared proposed amendments to the claims. In particular, new independent claim 26 was rewritten to include the limitations recited in claim 15. The limitations of intervening claim 14 were rewritten into dependent claim 28. The proposed

amendments were discussed in the telephone interview of January 14, 2004, and formally submitted in the “First Response with Amendments.”

The present Office Action alleges that the minor differences in terminology used (*e.g.* “removably fixed” vs. “removably attached”) warranted a new search necessitated by Applicant’s amendments. Applicants disagree and respectfully request that the FINAL status be reconsidered and withdrawn.

MPEP § 706.07(d) provides that “If, on request by applicant for reconsideration, the primary examiner finds the final rejection to have been premature, he or she should withdraw the finality of the rejection.” Therefore, Applicant hereby requests that the status of FINAL, which is premature, be withdrawn.

III. Objection to the Specification

The Office Action indicates that the Objection to the Specification in the Office Action mailed October 15, 2003 has not been overcome. Specifically, the Office Action alleges that Applicants did not formally amend the specification to insert the corrected text obscured by the printer error. The Office Action apparently indicates that the proposed language appears generally in the drawings except for the language indicating that “member latch 33 can be operated with one hand of a user.”

Accordingly, Applicants have amended the specification as indicated above to add the missing text. Applicants disagree with the allegation that there is no support for the phrase indicating that “member latch 33 can be operated with one hand of a user.” However, in an effort to expedite prosecution, the Applicants have not included this text in the amendments.

IV. Objection to the Drawings

The drawings are objected to as allegedly failing to comply to with 37 C.F.R. 1.84(p)(4) because reference character “50” has been used to designate both the “aperture” and the “hose.” Applicant has amended FIG. 2, as indicated on the drawing sheet included herein, to designate the “hose” as reference number 57, rather than 50. Additionally, the specification has been amended, as indicated above, to reflect this change. Accordingly, Applicants submit that the objection to the drawings has been overcome.

V. The §103 Rejections to Claims 26-28 are Moot

The Office Action rejected claims 26-28 under §103(a). However, in that claims 26-28 have been canceled, Applicants respectfully submit that the rejections are moot and should be withdrawn.

VI. New Claim 29 is Patentable Over *Ducate* in View of *Elliott*

The Office Action rejects claim 26 under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Patent No. 4,886,045 to Ducate, Jr., *et al.* (“*Ducate*”) in view of U.S. Patent No. 5,065,734 to Elliott (“*Elliott*”). As indicated above, claim 26 was canceled. However, Applicants present distinguishing features of new claim 29 to prematurely address an ensuing rejection based on *Ducate* and *Elliott*.

Claim 29 recites:

A portable grill apparatus comprising:

- a grill having a hood and a firebox;
- a burner assembly being disposed in said grill, said burner assembly being capable of heating an interior portion of said grill;
- a frame being arranged and configured to substantially correspond to said grill and to receive and support said grill;
- an adjustable leg assembly extending from said frame;
- a fuel connector in communication with said gas burner and extending outwardly from said grill, said outwardly extending portion***

including a valve for controlling the amount of fuel delivered to the burner assembly; and

a side shelf extending outwardly from said firebox, said side shelf having a substantially planar surface, the planar surface having a thickness and an opening configured to access the valve.

(*Emphasis Added*). Applicants respectfully submit that claim 29 defines over any combination of *Ducate* or *Elliott* for at least the reason that the proposed combination fails to disclose, teach, or suggest the features emphasized in bold text above.

The portable grill of claim 29 includes **“a fuel connector in communication with said gas burner and extending outwardly from said grill, said outwardly extending portion including a valve for controlling the amount of fuel delivered to the burner assembly.”** Thus, as claimed, the valve extending from the grill controls the amount of fuel delivered to the burner assembly that is “disposed in said grill.”

However, unlike the portable grill of claim 29, *Ducate* discloses, at most, that “fuel is transferred between fuel tank 58 and main burner 16 through a main valve 64, a pressure reducer 66, a conduit 60 and any one or more of valves 50a, 50b, and 50c, which are mounted behind a front wall panel 20 which is positioned above a pair of doors 52, 54.” (FIG. 1, FIG. 2, Col. 3, lines 7-12). However, as depicted in FIG. 2, the conduit 60 (the alleged fuel connector) of *Ducate* does not extend outwardly from said grill. Furthermore, the valves for controlling the gas burner in the grill are mounted “behind a front wall panel 20,” rather than being located on the claimed “outwardly extending portion” of the fuel connector. Accordingly, *Ducate* does not disclose, teach, or suggest “a fuel connector in communication with said gas burner and extending outwardly from said grill, said outwardly extending portion including a valve for controlling the amount of fuel delivered to the burner assembly.”

Furthermore, *Elliott* does not teach, suggest, or disclose **“a fuel connector in communication with said gas burner and extending outwardly from said grill, said**

outwardly extending portion including a valve for controlling the amount of fuel delivered to the burner assembly.” In fact, *Elliott* does not disclose a fuel connector, gas burner, or a valve at all. Rather, *Elliott* is directed to a portable grill for cooking outdoors with charcoal.” (Emphasis added, Abstract).

Accordingly, for at least the reason that the proposed combination of *Ducate* and *Elliott* does not disclose, teach, or suggest “a fuel connector in communication with said gas burner and extending outwardly from said grill, said outwardly extending portion including a valve for controlling the amount of fuel delivered to the burner assembly” as recited in claim 29, the claim should be allowed.

Claim 29 should be allowed for at least the additional reason that the proposed combination does not disclose, teach, or suggest “a side shelf extending outwardly from said firebox, said side shelf having a substantially planar surface, the planar surface having a thickness and *an opening configured to access the valve*” as recited in claim 29.

As an initial matter, the Office Action alleges that certain recitations in claim 26 are “recitations of intended use.” (e.g. “an aperture ... to provide access to a fuel source,” Office Action, pg. 6). Applicants submit that the language previously recited in claim 26, and the language currently recited in claim 29, is not “intended use” language. Rather, these features are functional limitations which must be considered like any other limitation. See MPEP §2173.05(g). In particular, Applicants submit that the language reciting a side shelf having “an opening configured to access the valve” must be considered.

Unlike claim 29, *Ducate* discloses, at most, that “fuel is transferred between fuel tank 58 and auxiliary gas burner 94 through main valve 64, a second pressure reducer 68, a second gas line 62 and a control valve 95 mounted behind front wall 86.” (col. 3, lines 48-51). However, valve 95 does not control, and *is not even capable of controlling*, the amount of fuel delivered to the burner assembly “disposed in said grill.” Rather, valve 95 controls the

amount of fuel delivered to auxiliary gas burner 94, which is part of the side cooker apparatus 80. Accordingly, *Ducate* does not disclose, teach, or suggest “a side shelf a side shelf extending outwardly from said firebox, said side shelf having a substantially planar surface, the planar surface having a thickness and ***an opening configured to access the valve.***”

Furthermore, *Elliott* does not teach, suggest, or disclose “a side shelf extending outwardly from said firebox, said side shelf having a substantially planar surface, the planar surface having a thickness and ***an opening configured to access the valve.***” In fact, *Elliott* does not disclose a side shelf, a fuel connector, gas burner, or a valve at all. Rather, *Elliott* is directed to a portable grill for cooking outdoors with charcoal.” (*Emphasis added*, Abstract).

Accordingly, for at least the additional reason that the proposed combination of *Ducate* and *Elliott* does not disclose, teach, or suggest “a side shelf extending outwardly from said firebox, said side shelf having a substantially planar surface, the planar surface having a thickness and ***an opening configured to access the valve***” as recited in claim 29, the claim should be allowed.

VII. Claim 29 is Patentable Over *Raymer* in View of *Elliott*

Additionally, the Office Action rejects claim 26 under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Patent No. 5,090,398 to Raymer, *et al.* (“*Raymer*”) in view of *Elliott*. As indicated above, claim 26 was canceled. However, Applicants present distinguishing features of new claim 29 to prematurely address any ensuing rejection based on *Raymer* and *Elliott*.

Claim 29

Claim 29 recites:

A portable grill apparatus comprising:
a grill having a hood and a firebox;

a burner assembly being disposed in said grill, said burner assembly being capable of heating an interior portion of said grill;

a frame being arranged and configured to substantially correspond to said grill and to receive and support said grill;

an adjustable leg assembly extending from said frame;

a fuel connector in communication with said gas burner and extending outwardly from said grill, said outwardly extending portion including a valve for controlling the amount of fuel delivered to the burner assembly; and

a side shelf extending outwardly from said firebox, said side shelf having a substantially planar surface, the planar surface having a thickness and **an opening configured to access the valve.**

(*Emphasis Added*). Applicants respectfully submit that claim 29 defines over any combination of *Raymer* or *Elliott* for at least the reason that the proposed combination fails to disclose, teach, or suggest the features emphasized in bold text above.

The portable grill of claim 29 includes **“a fuel connector in communication with said gas burner and extending outwardly from said grill, said outwardly extending portion including a valve for controlling the amount of fuel delivered to the burner assembly.”**

Thus, as claimed, the valve extending from the grill controls the amount of fuel delivered to the burner assembly that is “disposed in said grill.”

However, unlike the portable grill of claim 29, *Raymer* discloses, at most, that “the auxiliary side burner has its own valve control knob 92 and is supplied with fuel from fuel tank 42 through T-fitting 96 and fuel supply hose 98.” (Col. 5, lines 50-52). Accordingly, the valves for controlling the main burner 44 in the grill (FIG. 18) are not located on an alleged “outwardly extending portion” of the fuel connector. Therefore, *Raymer* does not disclose, teach, or suggest “a fuel connector in communication with said gas burner and extending outwardly from said grill, said outwardly extending portion including a valve for controlling the amount of fuel delivered to the burner assembly.”

Furthermore, *Elliott* does not teach, suggest, or disclose **“a fuel connector in communication with said gas burner and extending outwardly from said grill, said**

outwardly extending portion including a valve for controlling the amount of fuel delivered to the burner assembly.” In fact, *Elliott* does not disclose a fuel connector, gas burner, or a valve at all. Rather, *Elliott* is directed to a portable grill for cooking outdoors with charcoal.” (Emphasis added, Abstract).

Accordingly, for at least the reason that the proposed combination of *Raymer* and *Elliott* does not disclose, teach, or suggest “a fuel connector in communication with said gas burner and extending outwardly from said grill, said outwardly extending portion including a valve for controlling the amount of fuel delivered to the burner assembly” as recited in claim 29, the claim should be allowed.

Claim 29 should be allowed for at least the additional reason that the proposed combination does not disclose, teach, or suggest “a side shelf extending outwardly from said firebox, said side shelf having a substantially planar surface, the planar surface having a thickness and *an opening configured to access the valve*” as recited in claim 29.

As an initial matter, the Office Action alleges that certain recitations in claim 26 are “recitations of intended use.” (e.g. “an aperture ... to provide access to a fuel source,” Office Action, pg. 6). Applicants submit that the language previously recited in claim 26, and the language currently recited in claim 29, is not “intended use” language. Rather, these features are functional limitations which must be considered like any other limitation. See MPEP §2173.05(g). In particular, Applicants submit that the language reciting a side shelf having “an opening configured to access the valve” must be considered.

As to *Raymer*, the Office Action apparently alleges that a hole which valve control knob 92 protrudes is equivalent to the claimed “opening configured to access the valve.” However, unlike claim 29, *Raymer* discloses, at most, that “the auxiliary side burner has its own valve control knob 92 and is supplied with fuel from fuel tank 42 through T-fitting 96 and fuel supply hose 98.” (Col. 5, lines 50-52). Thus, valve control knob 92 does not control,

and *is not even capable of controlling*, the amount of fuel delivered to a burner assembly “disposed in said grill.” Rather valve control knob 92 controls the amount of fuel delivered to the auxiliary side burner, which is not disposed in the grill. Thus, even assuming, *arguendo*, that *Raymer* discloses an opening for valve control knob 92 to access the valve for the side burner, that valve is not the claimed valve which controls a burner assembly “disposed in said grill.” Accordingly, *Raymer* does not disclose, teach, or suggest “a side shelf a side shelf extending outwardly from said firebox, said side shelf having a substantially planar surface, the planar surface having a thickness and ***an opening configured to access the valve.***”

Furthermore, *Elliott* does not teach, suggest, or disclose “a side shelf extending outwardly from said firebox, said side shelf having a substantially planar surface, the planar surface having a thickness and ***an opening configured to access the valve.***” In fact, *Elliott* does not disclose a side shelf, a fuel connector, gas burner, or a valve at all. Rather, *Elliott* is directed to a portable grill for cooking outdoors with charcoal.” (*Emphasis added*, Abstract).

Accordingly, for at least the additional reason that the proposed combination of *Raymer* and *Elliott* does not disclose, teach, or suggest “a side shelf extending outwardly from said firebox, said side shelf having a substantially planar surface, the planar surface having a thickness and ***an opening configured to access the valve***” as recited in claim 29, the claim should be allowed.

VIII. Claims 29 - 32 are Patentable Over *Koziol* in view of *Oster*

The Office Action rejects claims 26 - 28 under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Patent No. Des. 326,207 to *Koziol* (“*Koziol*”) in view of U.S. Patent No. 1,582,346 to *Oster* (“*Oster*”). As indicated above, claim 26 was canceled. However,

Applicants present distinguishing features of new claim 29 to prematurely address any ensuing rejection based on *Koziol* and *Oster*.

Claim 29

Claim 29 recites:

A portable grill apparatus comprising:

- a grill having a hood and a firebox;
- a burner assembly being disposed in said grill, said burner assembly being capable of heating an interior portion of said grill;
- a frame being arranged and configured to substantially correspond to said grill and to receive and support said grill;
- an adjustable leg assembly extending from said frame;
- a fuel connector in communication with said gas burner and extending outwardly from said grill, said outwardly extending portion including a valve for controlling the amount of fuel delivered to the burner assembly; and**
- a side shelf extending outwardly from said firebox, said side shelf having a substantially planar surface, the planar surface having a thickness and an opening configured to access the valve.**

(*Emphasis added*). Applicants respectfully submit that claim 29 defines over any combination of *Koziol* or *Oster* for at least the reason that the proposed combination fails to disclose, teach, or suggest the features emphasized in bold text above.

The portable grill of claim 29 includes “**a fuel connector in communication with said gas burner and extending outwardly from said grill, said outwardly extending portion including a valve for controlling the amount of fuel delivered to the burner assembly.**”

Thus, as claimed, the valve extending from the grill controls the amount of fuel delivered to the burner assembly that is “disposed in said grill.”

As an initial matter *Koziol* discloses, at most, the “ornamental design for a barbecue grill.” While certain features of the barbecue grill may be speculated from the diagrams, any details as to the operation of the ornamental features would be pure conjecture. However, none of the diagrams appear to disclose “**a fuel connector in communication with said gas**

burner and extending outwardly from said grill, said outwardly extending portion including a valve for controlling the amount of fuel delivered to the burner assembly.”

Oster discloses that “a fuel tank 60 is preferably provided, which when the device is in use, may be supported at an end wall 11 of the cabinet.” (pg. 2, lines 110-111). FIGs. 2-3 apparently depict a connection (not referenced) between the burners 55 and a fuel tank 60. A portion of this connection apparently extends from the grill. However, as depicted in FIG. 5, the “regulating valves 56 for the burners 55 extend transversely thru [sic] the side portion 57 of the container 50, beneath the highest floor portion 53.” (pg. 2, lines 104-106). Thus, unlike claim 29, the portion of the connection that apparently extends from the grill does not include the valves 56 for burners 55.

Accordingly, for at least the reason that the proposed combination of *Koziol* and *Oster* does not disclose, teach, or suggest “a fuel connector in communication with said gas burner and extending outwardly from said grill, said outwardly extending portion including a valve for controlling the amount of fuel delivered to the burner assembly” as recited in claim 29, the claim should be allowed.

Claim 29 should be allowed for at least the additional reason that the proposed combination does not disclose, teach, or suggest “***a side shelf extending outwardly from said firebox, said side shelf having a substantially planar surface, the planar surface having a thickness and an opening configured to access the valve***” as recited in claim 29.

The Office Action alleges that *Koziol* discloses “a shelf includes an aperture defined by a recess disposed in an edge of the side shelf and through which a fuel gas conduit and control knob extend to provide access to a fuel source.” (Office Action, pg. 12). Applicant disagrees with this allegation. *Koziol* discloses, at most, the “ornamental design for a barbecue grill.” While certain features of the barbecue grill may be speculated from the diagrams, any details as to the operation of the ornamental features would be pure conjecture.

Even assuming the figures of *Koziol* depict a shelf having an aperture with a recess, this aperture is not “through which a fuel gas conduit and control knob extend to provide access to a fuel source” as alleged in the Office Action. Rather, while the operation of the grill may only be speculated, it appears that all control knobs are located on the front of the barbecue grill. Furthermore, no fuel source is depicted. Accordingly, unlike claim 29, the alleged side shelf opening of *Koziol* is not “***configured to access the valve.***”

Additionally, *Oster* does not disclose, teach, or suggest “***a side shelf extending outwardly from said firebox, said side shelf having a substantially planar surface, the planar surface having a thickness and an opening configured to access the valve***” as recited in claim 29. The Office Action alleges that “*Oster* shows a removable planar side shelf (80) extending outwardly from the firebox” and that “the shelf (80) includes an aperture (not referenced) defined by a recess in an edge of the side shelf and through which a fuel gas conduit and control knob (not referenced) extends to provide access to a fuel source (60).” (Office Action, pg. 12-13).

First, Applicant submits that *Oster* does not disclose a shelf having a planar surface. Rather, the alleged planar surface is apparently a series of interspersed wires having space between them. Although each individual wire may define a “surface,” the space between them, allegedly forming a “surface,” does not. Similarly, Applicants submit that the alleged planar surface (interspersed wires) does not have “a thickness” as recited in new claim 29. While each individual wire may define a “thickness,” the space between them (forming part of the alleged planar surface) does not.

However, even assuming, *arguendo*, that *Oster* does disclose a shelf having a “***planar surface having a thickness and an opening,***” the alleged opening is not “***configured to access the valve***” as recited in claim 19. *Oster* discloses, at most, that “a fuel tank 60 is preferably provided, which when the device is in use, may be supported at an end wall 11 of

the cabinet.” (pg. 2, lines 110-111). FIGs. 2-3 apparently depict a connection (not referenced) between the burners 55 and a fuel tank 60. A portion of this connection apparently extends from the grill. However, as depicted in FIG. 5, the “regulating valves 56 for the burners 55 extend transversely thru [sic] the side portion 57 of the container 50, beneath the highest floor portion 53.” (pg. 2, lines 104-106). Accordingly, the portion of the connection that apparently extends from the grill does not include the valves 56 for burners 55. Additionally, alleged opening of *Oster* is not even *capable* of providing access to the valve because the regulating valves 56 are apparently located inside the stove and away from shelf 80.

Accordingly, for at least the reason that the proposed combination of *Koziol* and *Oster* does not disclose, teach, or suggest “*a side shelf extending outwardly from said firebox, said side shelf having a substantially planar surface, the planar surface having a thickness and an opening configured to access the valve*” as recited in claim 29, the claim should be allowed.

Claims 30-32

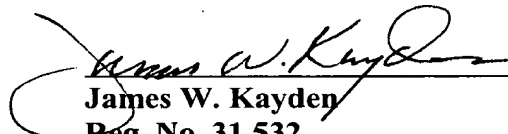
Applicants submit that claims 30-32 are patentable over the proposed combination of *Koziol* and *Oster* for at least the reason that independent claim 29, from which claims 30-32 depend, is allowable.

CONCLUSION

The Applicants respectfully submit that all claims are now in condition for allowance, and request that the Examiner pass this case to issuance. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

No fee is believed to be due in connection with this response. If, however, any fee is deemed to be payable, you are hereby authorized to charge any such fee to Deposit Account No. 20-0778.

Respectfully submitted,


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